IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.537 OF 2005

IN

FIRST APPEAL (ST)NO. 43481 OF 2002

IN

L.A.R. NO. 176 OF 2000

A L O N G W I T H

CIVIL APPLICATION NO.538 OF 2005

IN

FIRST APPEAL (ST)NO. 43698 OF 2002

IN

L.A.R. NO. 189 OF 2000

The State of Maharashtra ...Appellant

vs.

Shri. Dilip Achyut Tendulkar ...Respondent

S.N. Gawade, Government Pleader for the appellants.

D.N. Gondhali for respondents.

CORAM: S.B. DESHMUKH, J.
DATE : AUGUST 16, 2006.

P.C. :

1. The learned AGP, who is appearing in these two Civil Applications submits, that copy of

judgment and award passed by the reference court was applied on 30/08/2002. On receipt of copies, after following the procedure, required to be undertaken on behalf of the State, these two appeals have been filed in this court. In this process, delay of 130 days is caused in filing these two appeals. This delay is explained in paragraph 1 of the Civil Applications.

2. Though reply-affidavit is not filed on behalf of the respondents in these two Civil Applications, according to the learned counsel for the Respondents, no specific reason for delay of about 130 days is tendered by the Appellants.

3. The expresssion ‘sufficient cause’ mentioned in Section 5 of Indian Limitation Act is considered by this court and apex court time and again. In the matter of **Collector, Land Acquisition, Anantnag and Anr. vs. Mst. Katiji and Ors. reported in AIR 1987 S.C. page 1353,** the apex court, has, laid down, six guidelines. Those guidelines are reproduced herein below.

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay ? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of malafides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respect not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

4. It is also apposite to refer to the judgment of the apex court, in the matter of **N. Balkrishnan vs. M. Krishnamurthy, reported in AIR 1998 SC page**

3222. It is held by the apex court in paragraph 13 as under :

> "13. It must be remembered that in every case of delay there can be some lapse on the part the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of malafides or it is not put forth as part of a dilatory strategy the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the court should lean against acceptance of the explanation. While condoning delay the court should not forget the opposite party altogether. It must be borne in mind that he is a looser and he too would have incurred quite a large litigation expenses. It would be a salutary guideline that when courts condone the delay due to latches on the part of the applicant the court shall compensate the opposite party for his loss.

5. Having considered the explanation tendered in these two applications, I am satisfied that delay occurred is on account of just and sufficient reason. Looking to the fact that the delay is only of 130 days I am not inclined to direct any cost to be paid to the respondents.

6. In the result, both the Civil applications are allowed. Delay of 130 days caused in filing of

appeal is condoned. Civil Applications are accordingly allowed and disposed off.

(JUDGE)